

STEPTOE & JOHNSON LLP
ATTORNEYS AT LAW

David H. Coburn
202.429.8063
dcoburn@steptoe.com

1330 Connecticut Avenue, NW
Washington, DC 20036-1795
Tel 202.429.3000
Fax 202.429.3902
steptoe.com

227474

July 21, 2010

VIA ELECTRONIC FILING

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
JUL 21 2010
Part of
Public Record

**Re: MC-F-21035, Stagecoach Group plc and Coach USA, Inc., et al. —
Acquisition of Control — Twin America, LLC**

Dear Ms. Brown:

I write on behalf of Applicants in the above proceeding in response to the July 16, 2010 letter of the New York State Attorney General ("NYSAG") regarding the June 28, 2010 Decision and Order by a Regional Director of the National Labor Relations Board ("NLRB"). (The Regional Director's decision is now final, no appeal having been taken from it within the applicable time frame.) NYSAG claims that the Decision supports its view that the Twin America transaction was neither a merger nor a fully integrated joint venture. This letter responds to the NYSAG's characterization of the Decision.

As we reported to the Board on July 8, in the NLRB matter, the TWU sought an election to become the union representative for Twin America tour guides/ticket agents for the "CitySights" buses – even though those employees were already represented by Local 1212, United Service Workers Union, IUJAT. TWU represents Twin America's ticket sellers and tour guides for the "Gray Line" buses. As Twin America stated in its previous submissions to this Board, separate collective bargaining agreements with different unions, including TWU and Local 1212, cover Twin America's employees, and these agreements were in effect from the time period prior to the formation of Twin America. See November 17, 2009, Verified Statement of Ross Kinnear at ¶ 6; March 10, 2010, Applicants' Reply to the Comments of TWU at 2, 11, 18; March 10, 2010 Reply of Applicants to Sur-reply of the NYSAG at 29.

Cynthia T. Brown
July 21, 2010
Page 2

The only question before the NLRB was whether Twin America had merged the operations of the separate collective bargaining units to such an extent that would trigger an action under federal labor laws. That question presented nothing new regarding the STB proceeding, or the question of whether the Twin America transaction was a merger or fully integrated joint venture. As Applicants explained in their submissions to this Board, Twin America inherited separate unions from its formation and intended to honor fully its commitments to those distinct unions under their respective collective bargaining agreements. Indeed Twin America explained that it could not realize certain efficiencies at this time due to its separate union obligations, and thus, for example, maintained certain separate human resources for Gray Line and CitySights personnel. *See* March 10, 2010 Reply of Applicants to Sur-reply of the NYSAG at 14 n.12; March 10, 2010 Applicants' Reply to the Comments of TWU at 11.

Consistent with the Applicants' submissions in this proceeding, and contrary to NYSAG's letter, the Regional Director's Decision and Order also recognized that Twin America is a "joint venture between two established entities, International Bus Service[s], Inc. ('IBS') and CitySights Twin, LLC ('CitySights')." *See* Decision and Order at 3. The Regional Director also explained that IBS and CitySights "contributed significant equity, including their bus fleets" to the Twin America joint venture. *Id.* And he recognized that the Twin America transaction was a merger: "Bargaining unit employees' jobs have not changed in any manner since the merger." *Id.* at 11.

Moreover, the NLRB's Decision and Order further underscores the very efficiencies and cost savings arising from the formation of Twin America and its subsequent fleet operations that Applicants outlined in their submissions:

- "The Gray Line and City Sights accounting departments and call centers have been fully integrated." Decision and Order at 6.
- "The companies have jointly purchased fuel, spare parts and insurance for the vehicles, resulting in lower overall costs. The verified statements presented by the Petition also document that further integration is anticipated in the future." *Id.*
- "Since January 2010, the companies have been 'cross-honoring' each other's tickets for the Brooklyn tours, meaning that a City Sights ticket may be used on a Gray Line Brooklyn tour, and vice versa. Therefore, at the South Street Seaport and Battery Park, Gray Line and City Sights passengers stand in a single line for the Brooklyn Tours, and the Gray Line dispatcher loads all passengers onto whichever bus is available, either Gray Line or City Sights." *Id.* at 7.
- "Cross-honoring of tickets has also been implemented in other limited circumstances. City Sights offers an inclusive package that includes a

Cynthia T. Brown
July 21, 2010
Page 3

multilingual tour. The City Sights multilingual tour is given on a Gray Line motor coach that accommodates both Gray Line and City Sights passengers.” *Id.*

- “[A]ll City Sights passengers in wheelchairs are allowed to ride Gray Line buses.” *Id.* at 8.
- “[S]tarting at 3:00 p.m., customers in lower Manhattan are allowed to board either the Gray Line or City Sights buses regardless of which type of ticket they hold.” *Id.*
- “Mr. Murphy may direct City Sights buses to pick up Gray Line passengers at other locations when Gray Line buses were not available, and vice versa.” *Id.*¹

The NLRB’s Regional Director dismissed TWU’s petition and found that it was barred by the pre-existing, collective bargaining agreements. The NLRB stated that the Twin America joint venture “has not resulted in the creation of a new operation *sufficient to result in a question concerning representation*,” and the Regional Director consequently found that “the respective collective-bargaining agreements between [TWU] and Gray Line and between [Local 1212] and City Sights create a bar to an election in this matter.” Decision and Order at 13 (emphasis added). The NYSAG’s letter and quotation of the Regional Director’s decision failed to make clear that the NLRB’s statements about the “Twin America joint venture” were specific to union representation.

Moreover, as the Decision and Order recognizes, Twin America is managed by a six person Board of Managers, composed of three persons appointed by IBS and three persons appointed by CitySights. Decision and Order at 3. Because each of the members of Twin America, LLC can block a material decision of Twin America by refusing to offer at least one vote, each member has attained control of Twin America for STB regulatory purposes pursuant to 49 U.S.C. § 13102(5). See November 17, 2009 Reply of Applicants to Comments of NYSAG at 10. And both the Stagecoach set of Applicants and the CitySights set of Applicants have sufficient practical control of Twin America, and other regulated carriers, to warrant the filing of a section 14303 application and to give this Board jurisdiction over the formation of Twin

¹ With respect to footnote 10 of the Regional Director’s Decision and Order, Applicants note that Zev Marmurstein made clear in paragraph 6 of his March 10, 2010 Verified Statement that “Twin America maintains its fleet in two garages.” His statement in paragraph 15 of his November 16, 2009, Verified Statement “that Twin America has and will continue to realize additional cost savings as well from ... warehousing buses at common locations” refers to the additional cost savings Twin America hopes to continue to realize as the joint venture matures and additional efficiencies are achieved.

Cynthia T. Brown
July 21, 2010
Page 4

America based on such control, regardless of whether the Twin America transaction is characterized as a merger or not. *See* March 10, 2010, Reply of Applicants to Sur-Reply of the NYSAG at 5-6. 49 U.S.C. § 14303(a)(1), (4), (5). In fact, the NYSAG has not challenged this Board's jurisdiction over the Twin America transaction.

Finally, Applicants would like to bring to the Board's attention that Ms. Karen Fleming (who submitted objections to Applicants' application for control of Twin America on behalf of the TWU in this proceeding) was removed from the office of President for cause on July 7, 2010, by the union's Executive Board following an evidentiary proceeding. Accordingly, Applicants will serve her replacement with this letter and any future submissions. .

Respectfully submitted,



David H. Coburn
Attorneys for Applicants Stagecoach Group
plc; Stagecoach Transport Holdings plc.;
SCUSI Ltd.; Coach USA Administration,
Inc.; Coach USA, Inc.; International Bus
Services, Inc.; CitySights Twin, LLC; Mr.
Zev Marmurstein; and Twin America, LLC

cc: All parties of record
Mark A. Berman, Esq.

CERTIFICATE OF SERVICE

I certify that I have this 21st day of July 2010 served a copy of the foregoing Letter of Applicants by regular mail on the parties of record listed below and on counsel for Continental Guest Services Corporation:

U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, DC 20590

U.S. Department of Justice
Antitrust Division
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

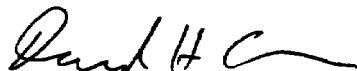
U.S. Department of Transportation
Office of the General Counsel
1200 New Jersey Avenue, S.E.
Washington, DC 20590

New York State
Office of the Attorney General
The Capitol
Albany, NY 12224-0341

James Yoon
Assistant Attorney General
Antitrust Bureau
New York State Office of the Attorney
General
120 Broadway, Suite 26 C
New York, NY 10271

Mr. Richard Ventola
Transport Workers Union of America
10-20 Banta Place, Suite 118
Hackensack, NJ 07601

Mark A. Berman
Ganfer & Shore, LLP
360 Lexington Ave.,
New York, NY 10017



David H. Coburn